

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE
2003 DEC 24 A 10:33

Johnny Nilsen, Kieran Kelly,
William Ryan, Karl Seemen,
Sean Sharkey, Fernando Suazo,
Don Abad, Charles Smith and,
Paul McGee,
Plaintiffs

vs

Celestial Dawn, Inc. in
persona and the F/V PROSPERITY,
in rem
Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS,

Civil Action
No.: 03-12449MLW

PLAINTIFFS' AMENDED VERIFIED COMPLAINT

Plaintiffs, Johnny Nilsen, Kieran Kelly, William Ryan, Karl Seemen, Sean Sharkey, Fernando Suazo, Don Abad, Charles Smith and Paul McGee, by way of Complaint against the Defendant, say:

Jurisdiction and Venue

1. Plaintiff brings this suit against the Defendant vessel under the provisions of 28 U.S.C.s.1333, as this is an admiralty claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and Supplemental Rule C, Federal Rules of Civil Procedure.
2. Venue lies within this District under the provisions of 28 U.S.C.s.1391.

The Parties

3. The plaintiff Johnny Nilsen is a resident of Cresco, Pennsylvania.
4. The plaintiff Kieran Kelly is a resident of Pittsfield, Massachusetts.

5. The plaintiff William Ryan is a resident of Melrose, Massachusetts.
6. The plaintiff Karl Seemen is a resident of Metairie, Louisiana.
7. The plaintiff Sean Sharkey is a resident of Mesa, Arizona.
8. The plaintiff Fernando Suazo is a resident of Gloucester, Massachusetts.
9. The plaintiff Don Abad is a resident of Gloucester, Massachusetts.
10. The plaintiff Charles Smith is a resident of Morgan City, Louisiana.
11. The plaintiff Paul McGee is a resident of Pascagola, Mississippi.
12. The defendant Celestial Dawn, Inc. is a Massachusetts corporation with a principal place of business in Gloucester, Massachusetts.

Facts

13. At all times relevant hereto, the plaintiffs were hired and retained by the defendant to work as crew members on board the F/V PROSPERITY.
14. Each of the plaintiffs met their respective obligations with respect to performance as crew members on board the F/V PROSPERITY.
15. Notwithstanding the defendant's obligation to pay the plaintiffs for work performed on board the F/V PROSPERITY, and the plaintiffs complete performance of each of their respective obligations under the terms of the employment contract, the defendant failed to pay the plaintiffs for the work so performed.
16. Plaintiff Paul McGee provided refrigeration services to the defendant, and was not paid for such services.

COUNT I: JOHNNY NILSEN:
CLAIM UNDER GENERAL MARITIME LAW

17. The plaintiff, Johnny Nilsen, restates and incorporates Paragraphs one through fourteen of his Complaint as if specifically pled herein.

18. Under the General Maritime Law, the defendant owes the plaintiff income and wages to compensate him for work performed on board the F/V PROSPERITY.

WHEREFORE, the plaintiff, Johnny Nilsen, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

COUNT II: JOHNNY NILSEN
CLAIM PURSUANT TO 36 U.S.C.10313

19. The plaintiff, Johnny Nilsen, restates and incorporates Paragraphs one through fourteen of his Complaint as if specifically pled herein.

20. Under the General Maritime Law, the defendant owes the plaintiff income and wages to compensate him for work performed on board the F/V PROSPERITY.

21. The defendant's willful failure to do so is a violation of 36 U.S.C. 10313.

WHEREFORE, the plaintiff, Johnny Nilsen, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

COUNT III: KIERAN KELLY
CLAIM UNDER GENERAL MARITIME LAW

22. The plaintiff, Kieran Kelly, restates and incorporates Paragraphs one through thirteen of his Complaint as if specifically pled herein.

23. Under the General Maritime Law, the defendant owes the plaintiff income and wages to compensate him for work performed on board the F/V PROSPERITY.

WHEREFORE, the plaintiff, Kieran Kelly, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

COUNT IV: WILLIAM RYAN
CLAIM UNDER GENERAL MARITIME LAW

24. The plaintiff, William Ryan, restates and incorporates Paragraphs one through thirteen of his Complaint as if specifically pled herein.

25. Under the General Maritime Law, the defendant owes the plaintiff income and wages to compensate him for work performed on board the F/V PROSPERITY.

WHEREFORE, the plaintiff, William Ryan, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

COUNT V: KARL SEEMANN
CLAIM UNDER GENERAL MARITIME LAW

26. The plaintiff, Karl Seemann restates and incorporates Paragraphs one through thirteen of his Complaint as if specifically pled herein.

27. Under the General Maritime Law, the defendant owes the plaintiff income and wages to compensate him for work performed on board the F/V PROSPERITY.

WHEREFORE, the plaintiff, Karl Seemann, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

COUNT VI: SEAN SHARKEY
CLAIM UNDER GENERAL MARITIME LAW

28. The plaintiff, Sean Sharkey, restates and incorporates Paragraphs one through thirteen of his Complaint as if specifically pled herein.

29. Under the General Maritime Law, the defendant owes the plaintiff income and wages to compensate him for work performed on board the F/V PROSPERITY.

WHEREFORE, the plaintiff, Sean Sharkey, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

COUNT VII: FERNANDO SUAZO
CLAIM UNDER GENERAL MARITIME LAW

30. The plaintiff, Fernando Suazo, restates and incorporates Paragraphs one through thirteen of his Complaint as if specifically pled herein.

31. Under the General Maritime Law, the defendant owes the plaintiff income and wages to compensate him for work performed on board the F/V PROSPERITY.

WHEREFORE, the plaintiff, Fernando Suazo, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

COUNT VIII: DON ABAD
CLAIM UNDER GENERAL MARITIME LAW

32. The plaintiff, Don Abad, restates and incorporates Paragraphs one through thirteen of his Complaint as if specifically pled herein.

33. Under the General Maritime Law, the defendant owes the plaintiff income and wages to compensate him for work performed

on board the F/V PROSPERITY.

WHEREFORE, the plaintiff, Don Abad, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

**COUNT IX: CHARLES SMITH
CLAIM UNDER GENERAL MARITIME LAW**

34. The plaintiff, Charles Smith, restates and incorporates Paragraphs one through thirteen of his Complaint as if specifically pled herein.

35. Under the General Maritime Law, the defendant owes the plaintiff income and wages to compensate him for work performed on board the F/V PROSPERITY.

WHEREFORE, the plaintiff, Charles Smith, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

**COUNT X: PAUL MCGEE
CLAIM FOR UNPAID SUPPLIES BROUGHT
PURSUANT TO THE GENERAL MARITIME LAW**

36. The plaintiff, Paul McGee, restates and incorporates Paragraphs one through twelve of his Complaint as if specifically pled herein.

37. The defendant failed to pay for said services. The conduct of the defendant heretofore described constitutes a breach of contract under the General Maritime Law.

WHEREFORE, the plaintiff, Paul McGee, demands judgment against the defendant, in an amount to appropriately compensate him for those monies owed, interests, costs, attorneys fees, and punitive damages.

VERIFICATION

STATE OF Massachusetts

I, Johnny Nilsen, being duly sworn depose and say:


I am a Plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as the matters state upon information and belief and as to those matters I believe them to be true.


JOHNNY NILSEN

STATE OF Massachusetts

County of Bristol

Then personally appeared the above-named Johnny Nilsen and stated that he is a plaintiff herein, and acknowledged the foregoing instrument to be the true act and deed of Johnny Nilsen.


Notary Public

My commission expires: 4/28/08

VERIFICATION

STATE OF MASSACHUSETTS

I, Kieran Kelly, being duly sworn depose and say:

I am a Plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as the matters state upon information and belief and as to those matters I believe them to be true.

Kieran Kelly
KIERAN KELLY

STATE OF MASSACHUSETTS

County of Berkshire

Then personally appeared the above-named Kieran Kelly and stated that he is a plaintiff herein, and acknowledged the foregoing instrument to be the true act and deed of Kieran Kelly.

N. Patricia E. Wright
Notary Public
My commission expires:

March 1, 2007

VERIFICATION

STATE OF Massachusetts

I, William Ryan, being duly sworn depose and say:

I am a Plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as the matters state upon information and belief and as to those matters I believe them to be true.

William Ryan
WILLIAM RYAN

STATE OF Massachusetts

County of Middlesex

Then personally appeared the above-named William Ryan and stated that he is a plaintiff herein, and acknowledged the foregoing instrument to be the true act and deed of William Ryan.

Janis L. Mastrolillo
Notary Public
My commission expires: Aug. 13, 2004

VERIFICATION

STATE OF LOUISIANA

I, Karl Seemann, being duly sworn depose and say:

I am a Plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as the matters state upon information and belief and as to those matters I believe them to be true.

Karl Seemann
KARL SEEMANN

STATE OF LOUISIANA

County of JEFFERSON

Then personally appeared the above-named Karl Seemann and stated that he is a plaintiff herein, and acknowledged the foregoing instrument to be the true act and deed of Karl Seemann.

Kimberly Bando
Notary Public

My commission expires: AT DEATH

VERIFICATION

STATE OF MASSACHUSETTS

I, Sean Sharkey, being duly sworn depose and say:

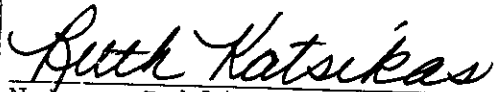
I am a Plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as the matters state upon information and belief and as to those matters I believe them to be true.


SEAN SHARKEY

STATE OF MASSACHUSETTS

County of Essex

Then personally appeared the above-named Sean Sharkey and stated that he is a plaintiff herein, and acknowledged the foregoing instrument to be the true act and deed of Sean Sharkey.



Notary Public

My commission expires: 12/9/05

VERIFICATION

STATE OF Massachusetts

I, Fernando Suazo, being duly sworn depose and say:

I am a Plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as the matters state upon information and belief and as to those matters I believe them to be true.

Fernando Suazo
FERNANDO SUAZO

STATE OF Massachusetts

County of Essex

Then personally appeared the above-named Fernando Suazo and stated that he is a plaintiff herein, and acknowledged the foregoing instrument to be the true act and deed of Feranando Suazo.

Geeth Katsikas

Notary Public

My commission expires: 12/19/05

VERIFICATION

STATE OF Massachusetts

I, Don Abad, being duly sworn depose and say:

I am a Plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as the matters state upon information and belief and as to those matters I believe them to be true.

Don Abad

DON ABAD

STATE OF Massachusetts

County of Essex

Then personally appeared the above-named Don Abad and stated that he is a plaintiff herein, and acknowledged the foregoing instrument to be the true act and deed of Don Abad.

Ruth Katsikas

Notary Public

My commission expires: 12/9/05

VERIFICATION

STATE OF LOUISIANA

I, Charles Smith, being duly sworn depose and say:

I am a Plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as the matters state upon information and belief and as to those matters I believe them to be true.

Charles Smith
CHARLES SMITH

STATE OF Louisiana

~~County~~ of Sf. Mary Parish

Then personally appeared the above-named Charles Smith and stated that he is a plaintiff herein, and acknowledged the foregoing instrument to be the true act and deed of Charles Smith.

Henry A. Gaudin
Notary Public

My commission expires: AT Death

VERIFICATION

STATE OF

MS

I, Paul McGee, being duly sworn depose and say:

I am a Plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as the matters state upon information and belief and as to those matters I believe them to be true.

Paul McGee

PAUL MCGEE

STATE OF

MS

County of

Jackson

Then personally appeared the above-named Paul McGee and stated that he is a plaintiff herein, and acknowledged the foregoing instrument to be the true act and deed of Paul McGee.

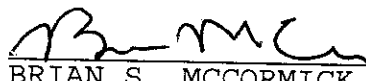
Martha Morris

Notary Public

My commission expires:

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 28, 2003
BONDED THRU STEGALL NOTARY SERVICE

Plaintiffs
By their attorneys,


BRIAN S. MCCORMICK, ESQ.
BBO# 550533
Orlando & Associates
One Western Avenue
Gloucester, MA 01930
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Date: 12/23/03

Cases/PROSPERITY/AmendedComplaint